

A Partnership Including
Professional Corporations
1850 K Street, N.W.
Washington, DC 20006-2296
202-887-8000
Facsimile 202-778-8087

DOCKET FILE COPY ORIGINAL

Boston
Chicago
Los Angeles
Miami
Newport Beach
New York
St. Petersburg (Russia)
Vilnius (Lithuania)
Washington, D.C.

Associated
(Independent) Offices:
Barcelona London
Brussels Madrid
Lisbon Paris

MCDERMOTT, WILL & EMERY

Including the practice formerly carried on by Lee, Toomey & Kent

Shirley S. Fujimoto
Attorney at Law
202-778-8282

April 2, 1996

RECEIVED

APR - 2 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Puget Sound Power & Light Company; Amendment to the
Commission's Rules Regarding a Plan for Sharing the
Costs of Microwave Relocation; WT Docket No. 95-157

WRITTEN EX PARTE PRESENTATION

Dear Sir/Madam:

This is to notify the Office of the Secretary that today Puget Sound Power & Light Company, through the law firm of McDermott, Will and Emery, submitted a written ex parte presentation to the Honorable Reed E. Hundt, Chairman of the Federal Communications Commission. In accordance with Section 1.1206 of the Commission's rules, we are enclosing two copies of the ex parte presentation for inclusion in the record of the above-captioned proceeding.

Very truly yours,


Shirley S. Fujimoto

cc (via hand delivery):

Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Michele Farquhar, Chief,
Wireless Telecommunications Bureau
Ralph Haller, Deputy Chief,
Wireless Telecommunications Bureau
Rosalind K. Allen, Associate Deputy Chief,
Wireless Telecommunications Bureau
Gerald P. Vaughn, Deputy Chief,
Wireless Telecommunications Bureau

No. of Copies rec'd
List ABCDE

041

EX PARTE OR LATE FILED

**PUGET
POWER**

WRITTEN EX PARTE PRESENTATION

April 1, 1996

RECEIVED

APR - 2 1996

FEDERAL COMMUNICATIONS COMMISSION
DEPT. OF COMMERCE

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street N.W., Room 814
Washington, D.C. 20554-0001

**Re: 2 GHz Microwave Relocations
WT Docket No. 95-157**

Dear Mr. Chairman:

Puget Sound Power & Light Company ("Puget Power") is an electric utility providing electric service to 840,000 customers in the State of Washington. Pursuant to the Commission's rules and procedures adopted in the Emerging Technologies docket (ET Docket No. 92-9), Puget Power and Sprint Spectrum (including its affiliates, agents and representatives, "Sprint") are engaged in voluntary negotiations for the relocation of Puget Power's 2 GHz microwave facilities. Puget Power was recently named in a letter to you dated March 1, 1996 from Mr. Wheeler on behalf of the Cellular Telecommunications Industry Association ("CTIA").

We were truly shocked and surprised by the revelations and tone of CTIA's letter, particularly as it relates to Puget Power. Until we independently discovered CTIA's letter (e.g., it was not disclosed or provided to us by CTIA or Sprint), Puget Power had absolutely no reason to believe that its proposal to Sprint was not acceptable. Indeed, while CTIA was preparing and delivering its letter, Puget Power was responding to Sprint's requests for additional information to support Puget Power's proposal. Puget Power has at all times negotiated in good faith with the objective of reaching a mutually acceptable agreement, all in accordance with and as contemplated by the Commission's voluntary negotiation rules and procedures. The Commission's rules and procedures were guiding the parties to the desired result.

And then came CTIA's letter, which totally mischaracterizes the negotiations between Sprint and Puget Power. CTIA's attempts to brand Puget Power as a "Bad Actor" or "extortionist" are offensive and totally without foundation. In the context of the negotiations between Sprint and Puget Power, CTIA's letter smells of bad faith and ulterior purpose (e.g., to threaten and bully incumbents into accepting

[09901-0001/BA960880.025]

The Honorable Reed E. Hundt, Chairman
April 1, 1996
Page 2

unreasonable terms dictated by PCS licensees). Upon examination, CTIA's letter is revealed as a brash attempt to undermine or circumvent the Commission's rules and procedures for the equitable and orderly relocation of 2 GHz microwave facilities.

Puget Power cannot speak for the other incumbents named in CTIA's letter. However, the letter contains a number of statements that are blatantly false and misleading as to Puget Power. Although it would not serve any useful purpose to identify and discuss each and every false or misleading statement in detail, we ask that the Commission consider the following:

Brief History of Negotiations

Within a month after the Commission issued PCS licenses to Sprint and/or GTE MobileNet (including its affiliates, agents and representatives, "GTE") for certain microwave frequencies previously licensed to Puget Power, Puget Power initiated contact with Sprint and GTE to commence voluntary negotiations under the Commission's rules and procedures. Puget did not receive any response until almost six months later when it was contacted by Vento Communications, Inc. ("VCI"), representing itself as authorized to negotiate on behalf of Sprint and GTE.

On October 25, Puget Power and VCI met to commence negotiations. Following this meeting, Puget Power provided a plethora of information and materials requested by VCI and permitted GTE to conduct a field audit of Puget Power's microwave facilities. On February 7, 1996, VCI presented Puget Power with a joint proposal by Sprint and GTE.

Puget Power carefully reviewed and analyzed the Sprint/GTE proposal and determined that it was not acceptable. Among other things, the consideration offered by Sprint/GTE would not cover Puget Power's costs of the relocation, and the proposal required Puget Power to (i) pay substantial penalties if certain conditions were not satisfied on schedule, (ii) assume the entire risk of the replacement system, and (iii) waive its right to a one-year post-construction test period.

The Honorable Reed E. Hundt, Chairman
April 1, 1996
Page 3

Puget Power then prepared and submitted a counter-proposal on February 23, 1996. VCI requested additional information relating to Puget Power's counter-proposal and promised a response on or about March 8, 1996.

CTIA sent its letter to you on or about March 1 (i.e., at which time VCI had not yet received all of the information in support of Puget Power's counter-proposal, and Puget Power had not received any comment or other response to its counter-proposal). As of March 1, Sprint/GTE had not given Puget Power any indication whatsoever that Puget Power's counter-proposal was not acceptable.

When Puget Power contacted VCI to inquire about CTIA's March 1 letter, VCI would indicate only that it was no longer involved in the project and that Puget Power would hear from Sprint Spectrum directly. Puget Power was then contacted by Sprint Spectrum whose representative indicated that Sprint Spectrum did not agree with CTIA's characterization of the negotiations with Puget Power and that the "letter from CTIA was in no way authorized by Sprint Spectrum."

On or about March 11, 1996, Sprint, on behalf of itself and GTE, submitted a response to Puget Power's counter-proposal. Sprint's response did not contain any indication whatsoever that Puget Power's counter-proposal was an "unconscionable demand" and, instead, included a counter to Puget Power's proposal and indicated a desire to continue the negotiations.

Puget Power is currently reviewing Sprint's March 11 counter-proposal and desires to continue the voluntary negotiation process with the objective of reaching a mutually acceptable agreement in the near future, well within the voluntary negotiation period established by the Commission. We believe that this objective is very attainable and mutually beneficial to both parties.

Comments to CTIA Letter

In light of the foregoing, the Commission should note the following with regard to CTIA's March 1 letter:

1. CTIA indicates that the "estimated fair cost" of the Puget Power relocation is \$3,000,000. This estimate is based upon the \$250,000 per link reimbursement cap under the Commission's proposed plan for cost-sharing among PCS licensees. This cap was proposed to protect future PCS licensees "who have no opportunity to participate in the negotiations" and is not relevant to the voluntary negotiations between Sprint and Puget Power or to Puget Power's actual costs of the relocation.

2. CTIA's "estimated fair cost" (i.e., \$250,000 per link) is substantially greater than the amount offered by Sprint to Puget Power (i.e., only \$184,000 per link).

3. CTIA's letter indicates that Puget Power's "requested cost" is \$7,600,000. There is no basis for this statement. The cost of Puget Power's initial proposal, based upon Sprint's own estimates, should not exceed \$5,900,000.

4. As previously noted by the Commission, the 2 GHz microwave bands support important communications providing vital services to the public. Puget Power's microwave system is an integral part of its electric operations. The system is used to transmit information which is critical in controlling the stability and reliability of Puget Power's electric system, which is tightly interconnected with other electric systems throughout the Western United States. A failure of the microwave system could disrupt or otherwise adversely affect service to Puget Power's customers (including health and welfare organizations, federal defense facilities, etc.) and have a cascading effect through other electric systems with which Puget Power's system is interconnected. The two-year voluntary negotiation period is an important aspect of the Commission's procedures which were designed to protect the public against disruption of such vital services.

5. In its letter, CTIA urged the Commission to shorten the voluntary negotiation period to one year. This would, in effect, eliminate the voluntary negotiation period for the Sprint/GTE/Puget Power negotiations (i.e., the one-year period requested by CTIA would end on or about April 5, 1996). In this regard, it should not be overlooked that Sprint did not respond to Puget Power's request to commence negotiations until nearly six months after Puget Power's request. Puget Power should not be penalized for Sprint's delay.

The Honorable Reed E. Hundt, Chairman

April 1, 1996

Page 5

6. CTIA also ignores the financial interests of Puget Power's customers. The Sprint/GTE proposal does not provide for the recovery of all of Puget Power's costs related to the relocation. Puget Power should be allowed to negotiate for a full cost recovery and not be limited by an arbitrary "cap" or other restriction. In its notice of the proposed rulemaking regarding the cost-sharing proposal, the Commission noted that the supporters of the cap emphasized "that the cap would not limit the amount that PCS licensees may pay to microwave incumbents to relocate their facilities."

7. CTIA's letter urges the Commission to limit an incumbent's recoverable costs to the undepreciated cost of the incumbent licensee's existing system. The incumbent's undepreciated cost has no bearing upon the incumbent's actual costs of the relocation. If the incumbent's actual costs are not recovered, the balance would have to be borne by the incumbent or, as in Puget's case, its customers. This would not be fair or equitable. In addition, this change would greatly disadvantage the incumbents during the voluntary negotiation period.

8. The other actions urged by CTIA in its letter would prejudice those who, like Puget Power, have negotiated in good faith in reliance on the Commission's existing rules and procedures and otherwise disadvantage incumbents in the voluntary negotiation period. In addition, such actions would embroil interested parties and the Commission in disputes as to whether negotiations have been carried on in "good faith" and otherwise undermine the Commission's established rules and procedures for the orderly and equitable relocation of 2 GHz facilities.

9. At Sprint's request, Puget Power and Sprint entered into a Reciprocal Confidentiality Agreement which covers these negotiations. Sprint appears to have intentionally violated, or at least ignored, its obligations under the very agreement that it imposed upon Puget Power.

10. CTIA's letter was submitted in connection with the proposed rules regarding a plan for sharing the costs of microwave relocation among PCS licensees (WT Docket No. 95-157). Contrary to the Commission's direction, CTIA's letter attempts to reopen the existing relocation procedures for microwave incumbents adopted in the Emerging Technologies docket (ET Docket No. 92-9). As noted in the Commission's Notice, these procedures were the product of extensive comment and

The Honorable Reed E. Hundt, Chairman

April 1, 1996

Page 6

deliberation prior to the initial licensing of PCS. Consequently, CTIA's letter should not be considered in the current proceeding.

11. Puget Power believes that it has been wrongly accused of being a "Bad Actor", making "unconscionable demands", behaving in an "outlandish" and "irresponsible" manner, refusing to "bargain in earnest", making "financial demands having no relation to the actual cost of relocation", etc. To the contrary, Mr. Wheeler's letter suggests that it is CTIA (and perhaps Sprint) whose behavior has been outrageous and irresponsible.

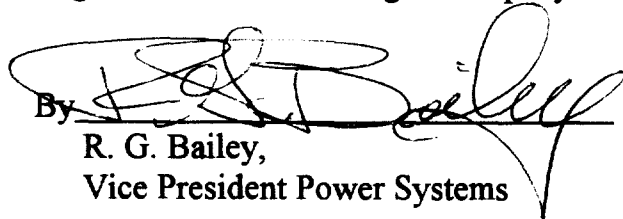
Conclusion

We respectfully request the Commission to deny CTIA's request for changes in the microwave relocation rules. If the Commission is inclined to consider CTIA's request, the Commission should carefully investigate and scrutinize CTIA's allegations which, if the allegations as to Puget Power are any indication, cannot be relied upon as true or accurate.

If you have any questions or if we can be of any further assistance in the Commission's deliberations, please let me know.

Yours truly,

Puget Sound Power & Light Company

By 
R. G. Bailey,
Vice President Power Systems

The Honorable Reed E. Hundt, Chairman

April 1, 1996

Page 7

cc: Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Michele Farquhar, Chief,
Wireless Telecommunications Bureau
Ralph Haller, Deputy Chief,
Wireless Telecommunications Bureau
Rosalind K. Allen, Associate Deputy Chief,
Wireless Telecommunications Bureau
Gerald P. Vaughn, Deputy Chief,
Wireless Telecommunications Bureau